IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

Crl.Rev.Pet.No. 2928 of 2007()

CRA.309/2003 of II ADDL. SESSIONS COURT, TRIVANDRUM
CC.563/2000 of JUDL. MAGISTRATE OF FIRST CLASS COURT, VARKALA

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REVN. PETITIONER: (APPELLANT/ACCUSED)

ANILKUMAR, S/O. KARUNAKARAN,
THEKKEILAKAM VEEDU, ANGADIKKUNNU,
NEAR KOOTTIKKADA, PERETTIL DESOM, OTTOOR VILLAGE,
THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.M.R.RAJESH

RESPONDENTS: (RESPONDENT/STATE)

STATE OF KERALA, REP. BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI. K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 3-8-2007 HE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.RAMKUMAR,J.

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CRL.R.P. 2928 of 2007

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Dated, this the 3rd day of August 2007

O R D E R

Revision petitioner who is the sole accused in C.C. 563 of 2000 on the file of J.F.C.M. Varkala for offences punishable under Sections 452, 354 and 427 I.P.C. challenges the conviction entered and the sentence passed against him concurrently by the courts below for the above said offences.

2. The case of the prosecution is that on 9-5-2000 at about 1.15 a.m. the accused trespassed into the house of P.W.1 ,Shyla and tried to outrage her modesty and smashed the window glass and also smashed the flower pot kept in the courtyard causing a loss of Rs. 5,000/-.

3. The prosecution examined 7 witnesses as P.Ws 1 to 7 and got marked three documents as Exts.P1 to P3 and a broken piece of a flower pot as M.O.1.

4. After the close of the prosecution evidence the accused was questioned under Section 313 (1)(b) Cr.P.C. with regard to the incriminating circumstances appearing against him in the evidence for the prosecution. He denied those circumstances and maintained his innocence.

5. The learned Magistrate, after trial, as per judgment dated 6-6-2003 acquitted the accused of the offence punishable under Sec. 354 I.P.C. but convicted him of the offences

punishable under Sections 427 and 452 I.P.C. For the conviction under Section 427 I.P.C. he was sentenced to simple imprisonment for two months and to pay fine of Rs. 5,000/- and on default to pay the fine, to suffer simple imprisonment for one month. For the conviction under Section 452 I.P.C. the revision petitioner was sentenced to simple imprisonment for three months. From out of the fine amount, a sum of Rs. 4,000/- was directed to be paid to P.W.1 as compensation under Section 357 (1) Cr.P.C. Even though the accused preferred an appeal as Crl. Appeal No. 309 of before the II Addl. Sessions Court, Thiruvananthapuram, the lower appellate court dismissed the appeal confirming the conviction entered and the sentence passed against the revision petitioner. Hence this revision.

6. Eventhough the learned counsel for the revision petitioner assailed the conviction recorded against the revision petitioner, the conviction said has been recorded by both the courts after a careful evaluation of the oral and documentary evidence. Sitting in the rarefied revisional jurisdiction, this Court will be loathe to interfere with the conviction recorded by the courts below. The conviction entered against the revision petitioner for the offences punishable under passed under Sections 427 and 452 I.P.C., is accordingly confirmed.

7. What now survives for consideration is the question of adequacy or otherwise of the sentence imposed on the revision petitioner. The courts below having acquitted the revision petitioner of the offence punishable under Section 354 I.P.C. it is not possible to infer any corrupt or erotic motive in the accused in trespassing into the property of P.W.1. But at the same time,

the criminal trespass at an untimely hour and the act of causing destruction by committing mischief are certainly culpable. But the revision petitioner does not deserve penal servitude by way of incarceration for the aforesaid offence. I am , therefore, of the view that the interests of justice will be adequately met by directing the revision petitioner to suffer imprisonment till the rising of the court and to pay an appropriate fine as well as compensation. Accordingly, the sentence imposed on the revision petitioner is set aside and instead, for his conviction under Section 452 I.P.C. he is sentenced to undergo imprisonment till the rising of court and to pay a fine of Rs. 3,000/- (Rupees three thousand only) and for the conviction under Section 427 I.P.C. he is sentenced to undergo imprisonment till rising rising of court and pay a compensation of Rs. 5,000/- (Rupees five thousand only) to P.W.1 under Section 357 (3) Cr.P.C. The fine amount and compensation shall be paid within one month from today. In the event of default to pay the fine, he shall suffer simple imprisonment for two months. The event of default to pay compensation he shall suffer simple imprisonment for three months. The substantive sentence of imprisonment till rising of court shall run concurrently.

This Revision is disposed of as above.

V. Ramkumar, Judge.

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